

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KING COUNTY,

Plaintiff,

Case No. 2:24-cv-00049-BJR

v.

**AGREEMENT REGARDING
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION AND
ORDER**

EXPRESS SCRIPTS, INC., EXPRESS
SCRIPTS ADMINISTRATORS, LLC, MEDCO
HEALTH SOLUTIONS, INC., MERCK-
MEDCO, ESI MAIL ORDER PROCESSING,
INC., ESI MAIL PHARMACY SERVICE, INC.,
EXPRESS SCRIPTS PHARMACY, INC.,
EXPRESS SCRIPTS SPECIALTY
DISTRIBUTION SERVICES, INC.,
OPTUMINSIGHT, INC., OPTUMINSIGHT
LIFE SCIENCES, INC., THE LEWIN GROUP,
INC., INGENIX PHARMACEUTICAL
SERVICES, INC., INGENIX, INC.,
OPTUMRX, INC., AND OPTUM, INC.,

Defendants.

1 The parties hereby stipulate to the following provisions regarding the discovery of
2 electronically stored information (“ESI”) in this matter:

3 **A. General Principles**

4 1. An attorney’s zealous representation of a client is not compromised by conducting
5 discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate
6 in facilitating and reasonably limiting discovery requests and responses raises litigation costs and
7 contributes to the risk of sanctions.

8 2. Nothing in this protocol shall require any party that is reproducing documents that
9 were first produced in other litigation into this litigation to reformat or modify those reproductions
10 except as set forth herein.

11 3. The production of documents and ESI by the Parties also shall be subject to the
12 provisions of any orders concerning confidentiality, privilege, and protected health information as
13 agreed to among the Parties and entered by the Court in this action.

14 4. Nothing in this Stipulation shall be deemed to constitute a waiver of any objections
15 to the discoverability, admissibility, or confidentiality of documents or ESI that a Producing Party
16 may have with respect to any discovery request.

17 5. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P.
18 26(b)(1) must be applied in each case when formulating a discovery plan. To further the application
19 of the proportionality standard in discovery, requests for production of ESI and related responses
20 should be reasonably targeted, clear, and as specific as possible. This agreement is intended to
21 assist the parties in identifying relevant, responsive information that has been stored electronically
22 and is proportional to the needs of the case. The agreement does not supplant the parties’
23 obligations to comply with Fed. R. Civ. P. 34.

1 **B. ESI Disclosures**

2 Within 30 days of the entry of this Order, the parties shall meet and confer to discuss
3 custodians, non-custodial data sources, third-party data sources (if any) and inaccessible data (if
4 any) (the “Data Sources”). Any disputes should promptly be submitted to the Court for resolution.

5 Any party may utilize existing prior disclosures to disclose these Data Sources, particularly
6 with respect to material that has been or will be produced in this litigation that has already been
7 produced in related litigation. In the event a party learns that additional Data Sources not disclosed
8 in a prior disclosure are relevant to this litigation, the party will disclose such supplemental new
9 Data Sources.

10 **C. ESI Discovery Procedures**

11 1. **On-site inspection of electronic media.** Such an inspection shall not be required
12 absent a demonstration by the requesting party of specific need and good cause or by agreement
13 of the parties.

14 2. **Search methodology.** The parties shall timely confer to attempt to reach agreement
15 on appropriate search terms and queries, file type and date restrictions, data sources (including
16 custodians), and other appropriate computer- or technology-aided methodologies, before any such
17 effort is undertaken, or disclose such information to the extent the Producing Party relies on
18 materials already produced in other litigation. The parties will engage in a meet and confer process
19 regarding any additional terms sought by the non-producing party. The following provisions apply
20 to search terms / queries of the requesting party. Focused terms and queries should be employed;
21 broad terms or queries, such as product and company names, generally should be avoided. A
22 conjunctive combination of multiple words or phrases (*e.g.*, “computer” and “system”) narrows
23 the search and shall count as a single search term. A disjunctive combination of multiple words or
24 phrases (*e.g.*, “computer” or “system”) broadens the search, and thus each word or phrase shall
25 count as a separate search term unless they are variants of the same word. The producing party
26 may identify each search term or query returning overbroad results demonstrating the overbroad
results and a counter proposal correcting the overbroad search or query.

1 3. **Format.** The parties agree to the production format attached as Appendix A.

2 4. **De-duplication.**

3 A. To the extent exact duplicate documents reside within the producing party's
4 ESI data set, the producing party shall produce only a single, deduplicated
5 copy of a responsive Document. "Exact duplicate" shall mean bit-for-bit
6 identity of the document content with exact hash value matches; so-called
7 "near duplicates" will not be included within this definition. The parties
8 may de-duplicate their ESI production across custodial and non-custodial
9 data sources after disclosure to the requesting party, and the duplicate
10 custodian information removed during the de-duplication process tracked
11 in a duplicate/other custodian field in the database load file as described in
12 Appendix A.

13 B. A producing party shall de-duplicate ESI across custodians and populate a
14 field of data that identifies each custodian who had a copy of the produced
15 document (the "All Custodians" field) in addition to a separate field of data
16 identifying the custodian whose document is produced; such de-duplicated
17 documents shall be deemed produced from the custodial files of each such
18 identified custodian for all purposes in this litigation, including for use at
19 deposition and trial. A producing party shall use a uniform description of a
20 particular custodian across productions. Multiple custodians in the "All
21 Custodians" field shall be separated by a semicolon. Entity/departmental
22 custodians should be identified with a description of the entity or
23 department to the extent applicable.

24 5. **Email Threading.** The parties may use analytics technology to identify email
25 threads and need only produce the unique most inclusive copy and related family members and
26 may exclude lesser inclusive copies. The use of email threading does not waive any Party's right

1 to request, or oppose a request, for a less inclusive copy of any particular email, should good cause
2 warrant the request.

3 **6. Production of Known Responsive Documents.** The Parties agree that no
4 Document that is responsive to a Receiving Party's Document request shall be withheld solely on
5 the basis that the Document is not captured by the Parties' agreed-upon search parameters and
6 methodology.

7 **7. Parent–Child Relationships.** The Parties agree that if any part of a Document or
8 its attachments is responsive, the entire Document and attachments will be produced, except any
9 attachments that must be withheld or redacted and logged based on privilege or work-product
10 protection. The Parties acknowledge and agree that parent–child relationships within a Document
11 Family (the association between an attachment and its parent document or between embedded
12 documents and their parent) shall be preserved. Responsive non-privileged electronic documents
13 attached to an email or embedded within other electronic documents and hard-copy documents
14 attached or appended to hard-copy documents must be mapped to their parent by the beginning
15 Bates number and immediately follow that parent file in the sequence of the production. Email
16 attachments and embedded files or links “BEGATTACH” and “ENDATTACH” fields listing the
17 unique beginning Bates number of the parent documents and ending number of the last attachment
18 must be populated for each child and parent document. The Producing Party shall insert a slipsheet
19 for any attachment over which the Producing Party claims privilege or otherwise withholds under
20 applicable law or order or agreement of the parties, while maintaining the original consecutive
21 order of the attachment(s). An attachment that is part of a responsive family but contains no
22 information relevant to the litigation may be slipsheeted.

23 **8. Productions From Other Proceedings.** The production of documents made by
24 Defendants in other civil investigations, litigations, or administrative actions may be reproduced
25 in the format in which they were previously produced, including any previously produced
26 confidentiality designations, redactions, metadata, load files, and accompanying text files. In that

1 event, any privilege log or other record of withheld or redacted information shall be provided at
2 the time the records are produced.

3 **D. Preservation of ESI**

4 The parties acknowledge that they have a common law obligation, as expressed in Fed. R.
5 Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable information in the
6 party's possession, custody, or control. With respect to preservation of ESI, the parties agree as
7 follows:

8 1. Absent a showing of good cause by the requesting party, the parties shall not be
9 required to modify the procedures used by them in the ordinary course of business to back-up and
10 archive data; provided, however, that the parties shall preserve all discoverable ESI in their
11 possession, custody, or control.

12 2. The parties will supplement their disclosures in accordance with Fed. R. Civ. P.
13 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure
14 where that data is created after a disclosure or response is made (unless excluded under Sections
15 (D)(3) or (E)(1)-(2)).

16 3. Absent a showing of good cause by the requesting party, the following categories
17 of ESI need not be preserved:

18 A. Deleted, slack, fragmented, or other data only accessible by forensics.

19 B. Random access memory (RAM), temporary files, or other ephemeral data that are
20 difficult to preserve without disabling the operating system.

21 C. On-line access data such as temporary internet files, history, cache, cookies, and
22 the like.

23 D. Data in metadata fields that are frequently updated automatically, such as last-
24 opened dates (see also Section (E)(5)).

25 E. Back-up data that are substantially duplicative of data that are more accessible
26 elsewhere.

F. Server, system or network logs.

1 G. Data remaining from systems no longer in use that is unintelligible on the systems
2 in use and is substantially duplicative of data more accessible elsewhere.

3 H. Electronic data (*e.g.*, email, calendars, contact data, and notes) sent to or from
4 mobile devices (*e.g.*, iPhone, iPad, Android devices), provided that a copy of all
5 such electronic data is automatically saved in real time elsewhere (such as on a
6 server, laptop, desktop computer, or “cloud” storage).

7 **E. Privilege Logs**

8 1. A producing party shall create a privilege log of all documents fully withheld from
9 production on the basis of a privilege or protection, unless otherwise agreed or excepted by this
10 Agreement and Order.

11 2. Privilege logs shall include a unique identification number for each document and
12 the basis for the claim (attorney-client privileged or work-product protection). For ESI, the
13 privilege log may be generated using available metadata, including author/recipient or
14 to/from/cc/bcc names; the subject matter or title; and date created. Should the available metadata
15 provide insufficient information for the purpose of evaluating the privilege claim asserted, the
16 producing party shall include such additional information as required by the Federal Rules of Civil
17 Procedure. Privilege logs will be produced to all other parties no later than 30 days after delivering
18 a production unless an earlier deadline is agreed to by the parties.

19 3. Redactions need not be logged so long as the basis for the redaction is clear on the
20 redacted document (See Appendix A).

21 4. With respect to privileged or work-product information generated after the filing of
22 the complaint by or for litigation counsel, or other counsel as agreed by the parties, the parties are
23 not required to include any such information in privilege logs.

24 5. Activities undertaken in compliance with the duty to preserve information are
25 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

26 6. Pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically
stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall

1 not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver
2 by the producing party of any privilege applicable to those documents, including the attorney-
3 client privilege, attorney work-product protection, or any other privilege or protection recognized
4 by law. This Order shall be interpreted to provide the maximum protection allowed by Fed. R.
5 Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is
6 intended to or shall serve to limit a party's right to conduct a review of documents, ESI or
7 information (including metadata) for relevance, responsiveness or segregation of privileged or
8 protected information before production. Information produced in discovery that is protected as
9 privileged or work product shall be immediately returned to the producing party.

10 7. Privilege logs will be produced to all other parties on a rolling basis no later than
11 60 days after the last production from a custodial or non-custodial source is delivered to the
12 receiving party.

13 8. In connection with any reproduction of privileged documents from *In re National*
14 *Prescription Opiate Litigation*, MDL 2804 (N.D. Ohio), Defendants agree to provide the privilege
15 log associated with such documents to Plaintiff in this litigation.

16 9. The Parties agree that the following categories of documents are presumptively
17 privileged and shall not be logged: (i) outside counsel's files relating to the firm's involvement in
18 providing legal advice to Party in connection with any opioid related litigation or investigation,
19 and (ii) communications between a Party and its outside counsel regarding any opioid litigation,
20 investigation(s) relating to litigation or potential litigation, or other proceedings related to opioids,
21 provided the communications are protected from disclosure under Washington law by either the
22 work product doctrine or other applicable privilege.

23 10. The Receiving Party shall provide written notice to the Producing Party of any
24 Privilege Log entries that it asserts are not Privileged or that it asserts require further explanation
25 within 60 days of receiving the Privilege Log. The Parties agree to meet and confer to address the
26 issues raised in any such correspondence. To the extent the parties are unable to resolve the dispute,

1 the Parties agree to raise the issue to the court in the same manner established for any other
2 discovery dispute.

3 **F. Confidentiality Designation**

4 1. To the extent any Document or ESI (or portion thereof) produced as a TIFF image
5 is designated as “Confidential,” “Confidential Health Information,” “Highly Confidential,”
6 “Highly Confidential—Attorneys’ Eyes Only,” or “Highly Confidential—P&T Committee
7 Member Identifying Information” pursuant to any applicable stipulation or order concerning
8 confidentiality in this action, the Producing Party shall electronically brand the Confidentiality
9 Designation on the image at a location that is reasonably designed to avoid concealing or obscuring
10 any information from the source Document.

11 **G. No Waiver**

12 1. Nothing in this Stipulation shall be deemed to be a waiver of any party’s right seek
13 modification of this agreement, or to reasonably seek agreement from the other Parties, or a Court
14 ruling, to modify proposed or previously agreed-upon search terms, techniques, or tools (including
15 any proposed as supplements).

16 2. The production of any documents or information in this proceeding shall not, for
17 the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the
18 Producing Party of any privilege applicable to those documents, including the attorney-client
19 privilege, attorney work-product protection, or any other privilege or protection recognized by law.
20 Information produced in discovery that is protected as privileged or work product shall be
21 immediately returned to the producing party, and its production shall not constitute a waiver of
22 such protection.

DATED this 28th day of July, 2025.

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ORDER

Based on the foregoing, IT IS SO ORDERED.

Dated this 31st day of July, 2025.

A handwritten signature in black ink, reading "Barbara J. Rothstein", written over a horizontal line.

HONORABLE BARBARA J. ROTHSTEIN
United States District Court Judge